

BRB Nos. 86-2606 BLA
and 88-0420 BLA

LYMAN YARNELL)
)
 Claimant-Petitioner)
)
 v.)
) DATE ISSUED:
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the Decision and Order and Decision and Order on Reconsideration of Steven E. Halpern, Administrative Law Judge, United States Department of Labor.

Carolyn M. Marconis (Law Office of Charles A. Bressi, Jr.), Pottsville, Pennsylvania, for claimant.

Richard Zorn (Marshall J. Breger, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: STAGE, Chief Administrative Appeals Judge, BROWN and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order and the Decision and Order on Reconsideration (84-BLA-0350) of Administrative Law Judge Steven E. Halpern

denying benefits on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 et seq. (the Act). Based on the date of filing, October 28, 1980, the administrative law judge considered the claim pursuant to 20 C.F.R. Part 718. The administrative law judge credited claimant with eight and one-half years of coal mine employment, and noted that the Director, Office of Workers' Compensation Programs (the Director) conceded the existence of pneumoconiosis. The administrative law judge further found, however, that claimant did not establish total disability

pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied. Claimant filed an appeal of the administrative law judge's Decision and Order, which was dismissed without prejudice by the Board after claimant filed a Petition for Modification with the administrative law judge. On reconsideration, the administrative law judge found that the additional evidence provided by claimant did not support claimant's petition for modification. Accordingly, the original Decision and Order was not modified and benefits were again denied. On appeal, claimant contends that the administrative law judge erred in failing to make a finding as to the cause of claimant's pneumoconiosis pursuant to 20 C.F.R. §718.203 and that the administrative law judge erred in weighing the evidence pursuant to 20 C.F.R. §718.204(c) in both the original Decision and Order and the Decision and Order on Reconsideration. The Director responds in support of the administrative law judge's original Decision and Order and the Decision and Order on Reconsideration.

The Board's scope of review is defined by statute. The administrative law judge's findings of fact and conclusions of law must be affirmed if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc., 380 U.S. 359 (1965).

After careful consideration of the evidence of record, we conclude that the Decision and Order and the Decision and Order on Reconsideration of the administrative law judge are supported by substantial evidence and that any error therein is harmless. The administrative law judge on this record properly found that claimant did not establish total disability pursuant to 20 C.F.R. §718.204(c). In making this finding, the administrative law judge permissibly found the pulmonary function study evidence and arterial blood gas evidence to be non-qualifying pursuant to 20 C.F.R. §718.204(c)(1) and (c)(2). See Decision and Order at 2-3; Decision and Order on Reconsideration at 2-3; Lafferty v. Cannelton Industries, Inc., 12 BLR 1-190 (1989); Baker v. North American Coal Corp., 7 BLR 1-79 (1984); Street v. Consolidation Coal Co., 7 BLR 1-65 (1984). Pursuant to 20 C.F.R. §718.204(c)(4), the administrative law judge permissibly accorded greater weight to the opinion of Dr. Kaplan, who diagnosed that claimant did not suffer from a respiratory impairment, as the physician relied on the greatest variety of appropriate medical data and possessed superior medical qualifications. See Decision and Order at 5; Scott v. Mason Coal Co., 14 BLR 1-37 (1990); Minnich v. Pagnotti Enterprises, Inc., 9 BLR 1-89 (1986). Consequently, the administrative law judge's findings and inferences are supported by substantial evidence and the Board may not reweigh the evidence or substitute its own inferences on appeal. See Anderson v. Valley Camp of Utah, Inc., 12 BLR 1-111 (1989).

Accordingly, the administrative law judge's Decision and Order and the Decision and Order on Reconsideration denying benefits are affirmed.

SO ORDERED.

BETTY J. STAGE, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge